

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

HOWARD E. MARTIN, III,

Plaintiff,

v.

Case No. 2:23-cv-2358

Judge James L. Graham

Magistrate Judge Caroline H. Gentry

TIM SHOOP, WARDEN, et al.,

Defendants.

Order

This matter is before the Court to consider a Report and Recommendation (ECF No. 9) issued by Magistrate Judge Gentry on March 28, 2024. Plaintiff Howard E. Martin, III, an Ohio State inmate proceeding without the assistance of counsel, brings this action against numerous prison officials. Plaintiff attempts to bring this claim under 17 U.S.C. §106(b), alleging that prison officials revoked his “JPay tablet” which contained his personal intellectual property and “unreplaceable photographs.” Plaintiff also claims that his constitutional rights were violated because Defendants’ actions deprived him of his rights under the Fifth Amendment. Plaintiff’s motion to proceed *in forma pauperis* was previously denied by this Court. On February 23, 2024 Plaintiff was ordered to pay the full \$402 filing fee within thirty days (ECF No. 7). The deadline has since passed and the Plaintiff has still not paid the required filing fee.

The Magistrate Judge found that the Court explicitly warned Plaintiff that a failure to timely pay the full filing fee would result in the dismissal of the action. Even though Plaintiff is proceeding *pro se*, the procedural rules in ordinary civil litigation still apply and should not be interpreted to excuse mistakes. *McNeil v. United States*, 508 U.S. 106, 113 (1993). Due to Plaintiff’s failure to comply, the Magistrate Judge recommends that the matter be dismissed for failure to prosecute.

A. Standard of Review

If a party objects within the allotted time to a report and recommendation, the Court “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). Upon review, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

B. Plaintiff’s Objections to Report and Recommendation

Plaintiff timely filed an objection to the Report and Recommendation. In his objection, Plaintiff once again asserts that some of his prior filings did not appear on the prison computer (ECF No. 10). He also suggests that the Magistrate Judge’s findings are “blatantly disrespectful” and represent “judicial prejudice” against him. *Id.* Nowhere in his objection does Plaintiff argue against the Magistrate Judge’s finding that he has failed to pay the \$402 filing fee as ordered in this Court’s prior opinion.

The Court agrees with the Magistrate Judge that the Plaintiff has failed to properly prosecute this case. Plaintiff’s failure to pay the filing fee warrants a complete dismissal.

C. Conclusion

The Court agrees with the Magistrate Judge’s R&R (ECF No. 9) and **ADOPTS** the same. The Plaintiff’s objection (ECF No. 10) is **OVERRULED**.

It is so ORDERED.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: May 13, 2024